

Appl. No. 10/798,639
Reply dated August 29, 2005
Reply to Office Action mailed July 29, 2005

REMARKS

In response to the restriction requirement of claims 1-82 under 35 USC 121 into seven groups of claims including Group I for claims 1-26, Group II for claims 27-54, Group III for claims 55-60, Group IV for claims 61-65, Group V for claims 66-70, Group VI for claims 71-76 and Group VII for claims 77-82, Applicant hereby elects, with traverse, the Group I claims (claims 1-26) that are directed to a device for performing chemical reactions. However, Applicant believes that claims 1-54 (Groups I and II) should be properly grouped together as all of these claims are directed to a device for performing chemical reactions and the restriction is therefore improper.

In particular, MPEP § 803 specifies that the two criteria for proper restriction are: 1) the inventions are distinct; and 2) there must be a serious burden on the examiner if restriction is required. In the present restriction, Applicant asserts that there is not a serious burden on the examiner to combine Groups I and II together. In support of the restriction, the examiner has stated that "Group II requires 'a cavity located at a side of the substrate opposite the first side' and 'the porous region ... is formed by selectively removing at least one constituent of the substrate' which are not required by Group I products." However, claims 1 and 7, respectively, recite these elements in the Group I claims so Applicant does not believe that this is a proper basis for restricting the Group I claims from the Group II claims. The examiner also states that "Group II requires 'a reagent using in a oligonucleotide synthesis reaction' which is not required by the claims of Group I." However, this element is set forth only in claim 51 (a dependent claim) and Applicant has not elected this species (as set forth below) so Applicant does not believe that this poses a serious burden on the examiner. Furthermore, Applicant notes that when the examiner searches the claims of Group I, the examiner will be required to search claim 7 and the combination of claims 1 and 7 are substantially similar to claim 27 so that Applicant does not believe that combining Groups I and II together poses a serious burden on the examiner. Therefore, the burden on the Examiner will not be serious (the search scope will not be significantly expanded) if Groups I and II are combined. Therefore, the Examiner's restriction of the claims in Group I as distinct from the claims in Group II is improper and should be withdrawn.

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Species Election

The examiner has requested that Applicant elect from 18 sets of allegedly patentable distinct species of the claimed invention. In response to this species election, Applicant hereby makes the following species election:

Claims 1-2, 7-10, 13-15, 17-18, 20, 23 and 26 from Group I and Claims 27-28, 33-35, 38-40, 42-43, 45, 48 and 51-52 from Group II are generic to the elected species. In addition to the above generic claims, the elected species further read on the following claims:

Species A – Applicant elects borosilicate glass that reads on claims 5-6 from Group I and claims 31-32 from Group II.

Species B – Applicant elects 7.5 nanometers that reads on claims 3-4 from Group I and claims 29-30 from Group II.

Species C – Applicant elects alkylthiols that reads on claim 11 from Group I and claim 36 from Group II.

Species D – Applicant elects gold that reads on claim 12 from Group I and claim 37 from Group II.

Species E – Applicant elects aluminum that reads on claim 16 from Group I and claim 41 from Group II.

Species F – Applicant elects conductive epoxy and more particularly silver epoxy that reads on claim 19 of Group I and claim 44 of Group II.

Species G – Applicant elects a hydrophobic containment layer that reads on claim 21 from Group I and claim 46 from Group II.

Species H – Applicant elects the bar code marker that reads on claim 24 from Group I and claim 49 in Group II.

Species I – Applicant elects an aluminum reflective surface that reads on claim 24 from Group I and claim 50 from Group II.

Species J – Applicant elects a plastic non-reflective surface that reads on claim 24 from Group I and claim 50 from Group II.

Species K – Applicant elects ligation reactions that reads on the generic claims set forth above.

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Species L – Applicant elects three components of a chemical reaction that reads on the generic claims set forth above.

Species M – Applicant elects H_2SO_4 as a leachant that reads on the generic claims set forth above.

Species N – Applicant elects hydrofluoric acid as an etchant that reads on the generic claims set forth above.

Species O – Applicant elects a patterned mask that reads on the generic claims set forth above.

Species P – Applicant elects a suspension of solids in an aqueous solution test sample that reads on the generic claims set forth above.

Species Q – Applicant elects small molecule probes that reads on the generic claims set forth above.

Species R – Applicant elects peptide compounds that reads on the generic claims set forth above.

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CONCLUSION

In view of the above, it is respectfully submitted that Claims 1-54 should be examined by the examiner and reconsideration of the restriction requirement is respectfully requested.

The Examiner is invited to call Applicant's attorney at the number below in order to speed the prosecution of this application.

The Commissioner is authorized to charge any deficiencies in fees and credit any overpayment of fees to Deposit Account No. 07-1896.

Respectfully submitted,

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Dated:

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